

Defendants' Exhibit 1 to Responsive Memorandum of April 24, 2009

Table of Contents – Tribal Court Record (TCR)

(Note: A paper copy of the Tribal Court Record is being provided to Judge Campbell pursuant to LRCiv 5.4.)

TCR- 1 *Petition for Eviction; Complaint for Damages in Contract and Tort, Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, Tribal Court, Colorado River Indian Tribes, Case No. CV-CO-2007-0100. (October 1, 2007)*

In accordance with LRCiv 7.1(d) Defendants note that the Petition for Eviction is attached as Exhibit A to Plaintiffs' Complaint in No. 2:08-CV-474 (Dkt. # 1-1).

TCR- 2 *Judgment, Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, Tribal Court, Colorado River Indian Tribes, Case No. CV-CO-2007-0100. (June 13, 2008)*

TCR- 3 *Opinion and Order, Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, The Court of Appeals of the Colorado River Indian Tribes, Case No. 08-0003. (March 10, 2009)*

In accordance with LRCiv 7.1(d) Defendants note that the Opinion and Order is attached as Exh. 1 to the Joint Status Report filed in No. 2:08-CV-474 on March 17, 2009 (Dkt. # 46-1).

TCR- 4 *Order Denying Defendant Water Wheel Recreational Area, Inc., and Robert Johnson's Motions to Dismiss For Lack of Jurisdiction, Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, Tribal Court, Colorado River Indian Tribes, Case No. CV-CO-2007-0100. (January 15, 2008) ("January 15 Order")*

In accordance with LRCiv 7.1(d) Defendants note that this Order is attached as Exhibit B to Plaintiffs' Complaint in No. 2:08-CV-474 (Dkt. #1-2)

TCR- 5 *Lease No. B-468-CR*, Lessee: Water Wheel Camp Recreation Area, Inc., Lessor: Colorado River Indian Tribes. (May, 15, 1975) (Approved by Secretary of the Interior July 7, 1975.) (“Lease”)

In accordance with LRCiv 7.1(d) Defendants note that the Lease is attached as Exhibit A to Exhibit A of Plaintiffs’ Complaint in No. 2:08-CV-474 (Dkt. # 1-1, pp. 13-46).

TCR- 6 *Judgment*, United States of America v. Bert Thomas Denham and Barbara I. Denham, Civil No. 73-495-ALS, United States District Court, Central District of California. (March 5, 1975) (“Denham Judgment”)

In accordance with LRCiv 7.1(d) Defendants note that this Judgment is attached as Exhibit 3 to Defendants’ Opposition to Plaintiffs’ Emergency Motion for TRO, filed March 13, 2008, in No. 2:08-CV-474 (Dkt. # 14-3).

TCR- 7 *Letter from Jack D. Holt, Esq., Keller and Holt, to Bryan N. Freeman, Assistant U.S. Attorney*, Re: U.S. v. Denham, District Court Case No. 73-495-ALS. (May 30, 1973)

TCR- 8 *Letter from William D. Keller, United States Attorney, to the Honorable Wallace H. Johnson, Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice*, Re: U.S. v. Denham, District Court Case No. 73-495-ALS. (October 1, 1974)

TCR- 9 *Memorandum from United States Department of the Interior*, Re: United States v. Bert Thomas Denham, et al., Civ. No. 73-495-ALS (April 2, 1975)

TCR- 10 *Exhibits #25, #26 and #28 appended to the Deposition of Robert Johnson on February 29, 2008*, Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, Tribal Court, Colorado River Indian Tribes, Case No. CV-CO-2007-0100.

TCR- 11 *Order*, Re: Defendants Water Wheel Recreational Area, Inc., and Robert Johnson’s Motions to Dismiss, Plaintiff’s Requests for Admissions, etc., Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, Tribal Court, Colorado River Indian Tribes, Case No. CV-CO-2007-0100. (February 21, 2008)

In accordance with LRCiv 7.1(d) Defendants note that this Order is attached as Exhibit 1 to Defendants’ Opposition to Plaintiffs’ Emergency Motion for TRO, filed March 13, 2008 in No. 2:08-CV-474 (Dkt. # 14-1).

TRC- 12 *Order*, Re: Defendants Water Wheel Recreational Area, Inc., and Robert Johnson's Motions to Dismiss, Montana analysis, etc., Colorado River Indian Tribes vs. Water Wheel Camp Recreational Area, Inc., Robert Johnson, and Does 1-20, Tribal Court, Colorado River Indian Tribes, Case No. CV-CO-2007-0100. (March 18, 2008)

In accordance with LRCiv 7.1(d) Defendants note that this Order is attached as Exhibit B to Plaintiffs' Second Motion for Temporary Restraining Order, dated May 10, 2008, in No. 2:08-CV-474 (Dkt. # 26-2).

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

Response Memorandum of April 24, 2009

Tribal Court Record-1

Colorado River Indian Tribes v. Water Wheel

Petition for Eviction

**(not attached—This document is Exhibit A to Plaintiffs' Complaint in
No. 2:08-CV-474 (Dkt. # 1-1).**

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

Response Memorandum of April 24, 2009

Tribal Court Record-2

Colorado River Indian Tribes v. Water Wheel

Judgment of June 13, 2008

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IN THE TRIAL COURT

ORIGINAL FILED

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OF THE COLORADO RIVER INDIAN TRIBES
PARKER, ARIZONA

CLERK
TRIBAL COURT
COLORADO RIVER INDIAN TRIBES

COLORADO RIVER INDIAN TRIBES,
Petitioner/Plaintiff,
vs.
WATER WHEEL CAMP RECREATIONAL
AREA, INC., ROBERT JOHNSON, and DOES
1-20,
Respondents/Defendants.

Case No. CV-CO-2007-0100

JUDGMENT

THIS MATTER having come before the Colorado River Indian Tribes (CRIT) Trial Court for TRIAL on June 4-6, 2008.

The Petitioner/Plaintiff appeared through Attorneys Winter King, Amanda Garcia and Eric Shepard. Defendant Water Wheel Recreational Area appeared through Attorney Michael Frame. Defendant Robert Johnson appeared with Attorney Fred Welch.

After duly considering the pleadings, the testimony of witnesses, the evidence, and the arguments of counsel, and being otherwise fully informed of the causes of action, the responses and all factual and legal issues bearing on the same, the Court hereby finds as follows.

1. The Court hereby adopts and incorporates into this Judgment all findings of facts and conclusions of law previously entered by the Court in all Orders issued to date, also known as "the law of the case".

FIRST CAUSE OF ACTION
OCCUPATION OF TRIBAL LAND WITHOUT PERMISSION OR AGREEMENT
(CRIT Property Code § 1-101 et seq.)

2. In July 1975, the Plaintiff Colorado River Indian Tribes ("CRIT" or "Tribes") entered into Lease No. B-468-CR ("Lease") with Defendant Water Wheel Camp Recreational Area, Inc. ("Water Wheel"). Per the Lease, CRIT is the "Lessor" and "Water Wheel" is the Lessee. The term of the Lease is thirty-two (32) years beginning July 1975 and ending July

1 6, 2007. Per the Lease, CRIT agreed to lease twenty-six (26) acres of CRIT reservation trust
2 land ("real property") to Water Wheel. The leased land is more fully described in Plaintiff's
3 Exhibit 1, at pg I, para. I.

4 a. Plaintiff's Exhibit 1, pg I and II, para. II.

5 3. The Lease between Water Wheel and CRIT expired on July 6, 2007.

6 a. Plaintiff's Exhibit 1, at para. II.

7 b. Plaintiff's Request for Admissions to Defendant Robert Johnson, served
8 on Defendant Johnson on February 8, 2008 ("First Johnson RFA"), at
9 2(a).

10 c. Plaintiff's Request for Admissions to Defendant Water Wheel, served on
11 Defendant Water Wheel on February 8, 2008 ("First Water Wheel
12 RFA"), at 2(a)

13 4. CRIT, as Lessor of the real property, is entitled to pursue an "eviction" action against
14 Defendants under the CRIT Property Code, § 1-101 et seq. and to obtain any and all relief
15 authorized under the Code.

16 5. Pursuant to Property Code, § 1-302, CRIT made reasonable notice and demand
17 on Defendants to: vacate the property upon expiration of the Lease, that CRIT did not
18 intend to renew the Lease, that CRIT intended the Lease to expire, and that CRIT
19 intended to take over operation of Water Wheel resort after expiration of the Lease.

20 a. Plaintiff's Exhibit 2, Letter from Herman Laffoon, Jr., Commercial
21 Manager for CRIT Realty Services, to Johnson, dated January 3, 2007.

22 b. First Johnson RFA, Requests 2(c) & (d).

23 c. First Water Wheel RFA, Requests 2(c) & (d).

24 d. Plaintiff's Petition for Eviction; Complaint for Damages in Contract and
25 Tort ("Complaint").

26 e. Testimony of Herman Laffoon, Jr. that he told Johnson that CRIT was not
27 going to renew the Lease and that CRIT was going to take over the operation
28 of the Water Wheel park as a tribal operation after expiration of the Lease;

1 f. Testimony of Johnson that he knew that CRIT wanted to take over operation of
2 Water Wheel park as a tribally run business after expiration of the Lease.

3 g. Plaintiff's Second Request for Admissions to Defendant Water Wheel
4 served on March 3, 2008 ("Second Water Wheel RFA"), Request 3(g).

5 h. Plaintiff's Second Request for Admissions to Defendant Robert Johnson
6 served on March 3, 2008 ("Second Johnson RFA"), Request 3(g).

7 6. Defendants have continued to remain on, use and occupy the Water Wheel
8 resort property and collect rental payments from tenants and/or sub lessees and/or
9 members of Water Wheel Resort after expiration of the Lease on July 7, 2007.

10 a. Testimony of Defendant Johnson.

11 b. Testimony of Mr. Laffoon.

12 c. First Johnson RFA, Request 2(e).

13 d. First Water Wheel RFA, Request 2(e).

14 e. Second Johnson RFA, Request 3(f).

15 f. Second Water Wheel RFA, Request 3(f).

16 7. Defendants do not have CRIT's permission to continue to occupy the property
17 after expiration of the Lease on July 6, 2007.

18 a. Testimony of Mr. Laffoon.

19 b. First Johnson RFA, Request 2(b).

20 c. First Water Wheel RFA, Request 2(b).

21 8. CRIT has proven by a preponderance of the evidence that the Tribes are entitled
22 to Judgment and a Writ of Restitution against the Defendants ordering their eviction
23 and delivery of the property to the Tribes.

24 **SECOND CAUSE OF ACTION**
25 **DECLARATORY RELIEF**

26 9. There is an actual controversy between CRIT and Defendants insofar as CRIT
27 asserts that: (a) Defendants are occupying the Tribes' property without the Tribes'
28 permission after a reasonable demand to vacate was made; (b) as a result, CRIT has

1 been deprived of the use of its property since July 7, 2007; (c) CRIT has also been
2 deprived of adequate rent under the terms of the Lease. The facts establishing CRIT'S
3 entitlement to declaratory relief are set forth herein.

4 **THIRD CAUSE OF ACTION**
5 **BREACH OF LEASE AGREEMENT**

6 10. Pursuant to the Lease, Defendant Water Wheel was required to pay CRIT the
7 following percentages of gross receipts of business: (1) Sales of alcoholic beverages:
8 5%; (2) Rentals of trailer and camping spaces: 4%; (3) All other income derived from
9 business conducted on the premises: 2%.

10 a. Plaintiff's Exhibit 1, Lease, pages II-III, paragraph IV(B).

11 11. Water Wheel owed CRIT \$24,903.09 in percentages of gross receipts for the
12 2001-02 year.

13 a. Plaintiff's Exhibit 12.

14 12. Water Wheel owed CRIT \$28,255.77 in percentages of gross receipts for the
15 2002-03 year.

16 a. Plaintiff's Exhibit 13.

17 b. Defendants' Exhibit 2.

18 13. Water Wheel owed CRIT \$27,447.54 in percentages of gross receipts for the
19 2003-04 year.

20 a. Plaintiff's Exhibit 14.

21 b. Defendants' Exhibit 2.

22 14. Water Wheel owed CRIT \$32,340.48 in percentages of gross receipts for the
23 2004-05 year.

24 a. Plaintiff's Exhibit 15.

25 b. Defendants' Exhibit 2.

26 15. Water Wheel owed CRIT \$41,245.89 in percentages of gross receipts for the
27 2005-06 year.

1 a. Testimony of Robert Johnson.

2 b. Defendants' Exhibit 2.

3 16. Water Wheel owed CRIT \$36,664.39 in percentages of gross receipts for the
4 2006-07 year.

5 a. Testimony of Robert Johnson.

6 b. Defendants' Exhibit 2.

7 17. In total, Water Wheel owed CRIT \$190,857.16 in percentages of gross receipts
8 for the years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, and 2006-07.

9 18. Defendants did not pay CRIT any percentages of gross receipts of business for
10 the following years: 2001-02; 2002-03; 2003-04; 2004-05; 2005-06; 2006-07.

11 a. Testimony of Mr. Laffoon.

12 b. Plaintiff's Exhibits 3-9.

13 c. Second Water Wheel RFA, Requests 3(a), (b) & (c).

14 d. Second Johnson RFA, Requests 3(a), (b) & (c).

15 e. Special Appearance, Motion to Dismiss, and Answer of Robert Johnson,
16 paragraph 21 (admitting that "payments were made as set forth in ¶ 20(a)
17 through (h)" of Plaintiff's Complaint).

18 f. Special Appearance, Motion to Dismiss, and Answer of Water Wheel,
19 paragraph 21 (admitting that "payments were made as set forth in ¶ 20(a)
20 through (h)" of Plaintiff's Complaint).

21 g. Plaintiff's Complaint, paragraph 20(a) through (h) (indicating the
22 payments made by Water Wheel and whether they were for base annual rent or
23 percentages).

24 19. Pursuant to the Lease, Water Wheel was required to pay CRIT a minimum
25 annual rent of \$100 per acre per year for the first through the twenty-fifth years of the
26 Lease.

27 a. Plaintiff's Exhibit 1, Lease, at pg II, para. IV(A).

28

1 20. Pursuant to the Lease, prior to the twenty-sixth year of the Lease, the parties
2 were to renegotiate the minimum annual rent to the then current fair annual rental value
3 of the property exclusive of improvements, which value was to be estimated by normal
4 appraisal procedures and methods.

5 a. Plaintiff's Exhibit 1, Lease, at pg II, para. IV(A).

6 21. In 2000 and 2001, CRIT attempted to establish the minimum annual base rent
7 that would be due from Defendants beginning the twenty-sixth year of the Lease.

8 a. Plaintiff's Exhibit 10 and 11.

9 b. Testimony of Mr. Laffoon.

10 c. Defendant's Exhibit 1

11 d. Testimony of Mr. Johnson.

12 22. The Tribes' position was that the new minimum annual rent should have been
13 \$101,500.

14 a. Plaintiff's Exhibit 11.

15 b. Testimony of Mr. Laffoon.

16 23. The Tribes informed Defendants that, according to the Tribes' appraisal, the
17 new minimum annual rent would be \$101,500.

18 a. Plaintiff's Exhibit 11.

19 b. Testimony of Mr. Laffoon.

20 24. The parties failed to reach an agreement as to the minimum annual base rent due
21 beginning the twenty-sixth year of the Lease.

22 a. Testimony of Mr. Laffoon.

23 b. Defendant's Exhibit 1

24 c. Testimony of Mr. Johnson.

25 25. Pursuant to the terms of the Lease, lessee Water Wheel was required to pay the
26 following minimum annual rent:

27 the sum of one hundred dollars (\$100.00) per acre per year *for the first through*
28 *the twenty-fifth year of the lease.* Prior to the beginning of the twenty-sixth

1 year, Lessee and Lessor shall renegotiate the minimum annual rent to the then
2 current fair annual rental value of the leased premises exclusive of
3 improvements. *Said fair annual rental to be estimated by normal appraisal
procedures and methods. . . .*

4 a. Plaintiff's Exh. 1, Lease, at II (emphases added).

5 26. According to the plain language of this provision, two things are clear: First, the
6 "one hundred dollars per acre per year" minimum annual rental applies only to the first
7 through the twenty-fifth year of the Lease. It is not a default rent for the entire thirty-
8 two years of the Lease. Second, the rent for the twenty-sixth through the thirty-second
9 years of the lease was to be set at the "then current fair annual rental value" of the
10 property, and this value was to be established "by normal appraisal procedures and
11 methods." Thus, the rent for the last seven years of the Lease was not simply to be the
12 result of open-ended negotiations by the parties, but instead was to be established by
13 the objective standards of professional appraisal.

14 27. CRIT has shown at trial that the parties never agreed on what the true fair
15 annual rental value of the property was for 2000 through 2007. CRIT sought to
16 establish the new minimum annual rent.

17 a. Plaintiff's Exhibits 10 and 11.

18 b. Testimony of Mr. Laffoon.

19 28. CRIT's original position was that the fair annual rental value for the property
20 was \$130,000 per year; CRIT subsequently reduced that figure to \$101,500. CRIT
21 notified Defendants of its position by letter. *See* Plaintiff's Exhibits 10 & 11. Water
22 Wheel did not pay this increased rent. Instead, Water Wheel paid CRIT \$14,503.58—
23 the rental value Water Wheel argued was the fair annual value for the property—for
24 three years (2000-01, 2001-02, and 2002-03), then paid CRIT \$2,600 for two years
25 (2003-04, 2004-05), then stopped paying CRIT completely (2005-06, 2006-07).

26 29. Because the parties never agreed on what that fair annual rental value should
27 have been, CRIT is now asking the Court to make that determination. Although the
28

1 parties could have sought resolution of this issue earlier, the delay in bringing suit did
2 not harm Water Wheel. Water Wheel was clearly on notice that the minimum annual
3 rent would increase to the fair market value of the property for the last seven years of
4 the Lease. In support of this fact, Water Wheel actually paid CRIT \$14,503.58 per
5 year for the first three years of the period in which the new minimum annual rent was
6 to apply. *See* Plaintiff's Exhibits 3, 4, 5, 6. This increase reflected Water Wheel's
7 position on what the new minimum annual rent should have been. *See* Compl. ¶ 17;
8 Water Wheel Answer ¶ 18; Johnson Answer ¶ 19 (admitting that Water Wheel's
9 position was \$14,503.58). Finally, CRIT notified Water Wheel of its position on the
10 new minimum annual rent, and gave Water Wheel the opportunity to either accept the
11 new rent, or request a cancellation of the Lease. Plaintiff's Exhibits 10 & 11. Water
12 Wheel did neither, instead choosing to remain on the property and pay significantly
13 less rent than the fair annual rental value of the property.

14 30. At trial, CRIT presented evidence of Walter Winus, Jr., an expert appraiser,
15 establishing that the fair market rental value of the property exclusive of improvements
16 as of July 1, 2000 was \$192,000 per year. Mr. Winus also testified that he reached this
17 conclusion by using normal appraisal methods. This testimony supports CRIT's claim
18 for damages in two ways. First, it supports CRIT's claim that, pursuant to the Lease,
19 CRIT should have received \$192,000 per year for the last seven years of the Lease.
20 Mr. Winus's testimony also supports CRIT's alternative argument that, of the two
21 appraisals relied upon by parties in renegotiating the rent, CRIT's appraisal of
22 \$101,500 per year was much closer to the true fair market value of the property than
23 Water Wheel's appraisal of \$14,503.58 per year, and thus CRIT should have received
24 at least \$101,500 per year.

25 31. Finally, the actions of Water Wheel indicate that it, too, interpreted the Lease to
26 provide for an increase in the minimum annual rent to the fair market rental value of
27 the property for the last seven years, regardless of when or whether the parties reached
28

1 a negotiated agreement on the new rent. Although CRIT never agreed to Water
2 Wheel's proposed new rent of \$14,503.58 per year, Water Wheel paid that amount for
3 the first three years of the new rental period (2000-2003). Thus, Water Wheel
4 apparently shared CRIT's interpretation of the Lease that, regardless of the status of
5 negotiations at the time, Water Wheel was going to be required to pay the fair market
6 rental value for the property for the last seven years of the Lease. Accordingly, CRIT
7 is entitled to damages in the amount of the unpaid minimum annual rent, as that
8 minimum annual rent is determined by the Court.

9 32. The fair market rental value of the property as of July 1, 2000 was \$192,000.

10 a. Testimony of Walter Winius, Jr.

11 33. Water Wheel paid CRIT the following amounts in minimum annual rent for the
12 years 2000-01, 2001-02, 2002-03, 2003-04, and 2004-05:

13 a. July 7, 2000: \$2,600 (base rent for 2000-2001)

14 b. January 31, 2001: \$11,903.58 (additional base rent for 2000-2001)

15 c. January¹ 19, 2001: \$14,503.58 (base rent for 2001-2002)

16 d. August 16, 2002: \$14,503.58 (base rent for 2002-2003)

17 e. August 14, 2003: \$2,600 (base rent for 2003-2004)

18 f. October 10, 2005: \$2,600 (base rent for 2004-2005)

19 i. Plaintiff's Complaint ¶ 20.

20 ii. Special Appearance, Motion to Dismiss, and Answer of Robert
21 Johnson, paragraph 21 (admitting that "payments were made as
22 set forth in ¶ 20(a) through (h)" of Plaintiff's Complaint).

23 iii. Special Appearance, Motion to Dismiss, and Answer of Water
24 Wheel, paragraph 21 (admitting that "payments were made as set
25 forth in ¶ 20(a) through (h)" of Plaintiff's Complaint).

26
27 ¹ Plaintiff's Exhibit 5 shows an actual receipt date of "July" 19, 2001.
28

1 iv. Plaintiff's Exhibits 3-8.

2 v. Testimony of Mr. Laffoon.

3 34. The payments listed in paragraph 33 are the only payments Water Wheel made
4 to CRIT for the minimum annual rent due under the Lease for the years 2000-01, 2001-
5 02, 2002-03, 2003-04, and 2004-05.

6 a. Testimony of Mr. Laffoon.

7 b. Second Johnson RFA, Request 3(b).

8 c. Second Water Wheel RFA, Request 3(b).

9 35. Pursuant to Property Code, § 1-316(b), CRIT has proven by a preponderance of
10 the evidence that the Tribes are entitled to actual damages, including interest, as
11 provided in the Lease (Plaintiff's Exhibit 1, Lease, at pg II, para. IV(A)).

12 **FOURTH CAUSE OF ACTION**
13 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC**
14 **ADVANTAGE**

15 36. Pursuant to the terms of the Lease, CRIT was entitled to regain possession of the
16 real property subject to the Lease, along with improvements thereto, upon expiration of
17 the Lease.

18 a. Plaintiff's Exhibit 1, Lease, Addendum page 5, paragraph 6; Addendum
19 page 20, paragraph 29.

20 37. The Tribes' intended to take over operation of the Water Wheel Resort when the
21 Lease expired.

22 a. Testimony of Mr. Laffoon.

23 b. Testimony of Mr. Johnson.

24 38. One or more CRIT employees informed Water Wheel that the Tribes intended
25 to take over operation of the Resort upon expiration of the Lease. Defendant Johnson
26 knew that CRIT intended to operate the Water Wheel park after expiration of the lease
27 on July 6, 2007.

28 a. Second Johnson RFA, Request 3(g).

1 b. Second Water Wheel RFA, Request 3(g).

2 c. Testimony of Mr. Laffoon.

3 d. Testimony of Mr. Johnson.

4 39. Defendants nonetheless continued to occupy the property and operate the Resort
5 after expiration of the Lease. See paragraph 6 above.

6 40. Defendants' interference with CRIT's right to operate the Resort after expiration
7 of the Lease was intentional.

8 a. Inference from facts set forth above. *See Ramona Manor Convalescent*
9 *Hospital v. Care Enterprises*, 177 Cal. App. 3d 1120, 1132 (1986).

10 41. As a result of Defendants' actions, CRIT could not take over operation of the
11 Resort.

12 a. Testimony of Mr. Laffoon.

13 **CRIT'S ATTORNEYS' FEES**

14 42. CRIT has prevailed in its action to evict Defendants.

15 43. CRIT has prevailed in its action alleging Defendants breached the lease with the
16 Tribes and that CRIT is entitled to recover damages (rents due) under the lease.

17 44. CRIT has prevailed in its Motion to Compel Discovery. Defendants disobeyed
18 the Court's order compelling discovery.

19 45. The amount of attorneys' fees requested by CRIT is reasonable in light of the
20 complexity of this case and Defendants' litigation strategy.

21 46. During the course of this case, the Defendants filed numerous motions,
22 interlocutory appeals and disobeyed the court orders compelling discovery. As a result
23 of Defendants litigation strategy, the amount of time CRIT's attorneys had to spend
24 litigating Defendants' motions, interlocutory appeals and disobedience of court orders
25 compelling discovery, the Plaintiff's attorney fees and costs have increased
26 significantly. Defendants refused to comply with any of the Court's discovery orders
27 or procedures, requiring CRIT to file a motion to compel discovery and two motions in
28

1 limine.

2 **WATER WHEEL AND JOHNSON ARE DEEMED TO BE ALTER EGOS AS A**
3 **SANCTION FOR VIOLATING THE COURT'S ORDER COMPELLING**
4 **DISCOVERY**

47. Defendants willfully violated the Court's order compelling discovery.

a. Declaration of Winter King in Support of Plaintiff's Motion in Limine to
Exclude Evidence at Trial on the Merits filed June 2, 2008.

48. Plaintiff was prejudiced by Defendants' failure to provide discovery.

a. Declaration of Winter King in Support of Plaintiff's Motion in Limine to
Exclude Evidence at Trial on the Merits filed June 2, 2008.

49. Sanctions are imposed against Defendant Johnson in accordance with TRCP
Rule 37. Therefore, the Court finds that Defendant Robert Johnson is the majority
shareholder and person with ultimate decision-making authority for Water Wheel.

a. Johnson Document Request No. 16; Water Wheel Document Request
No. 21; Water Wheel Interrogatories Nos. 6, 7, 11.

50. Sanctions are imposed against Defendant Johnson in accordance with TRCP
Rule 37. The Court therefore finds that Defendant Water Wheel is inadequately
capitalized as a corporation.

a. Water Wheel Document Request Nos. 14, 23, 24; Water Wheel
Interrogatories Nos. 14, 15.

51. Sanctions are imposed against Defendant Johnson in accordance with TRCP
Rule 37. The Court therefore finds that from 1999 to the present, Water Wheel has
made loans and gifts to Johnson.

a. Johnson Document Request No. 13; Water Wheel Document Request
No. 26; Johnson Interrogatories Nos. 17, 20.

52. Sanctions are imposed against Defendant Johnson in accordance with TRCP
Rule 37. The Court therefore finds that from 1999 to the present, Johnson has made
loans and gifts to Water Wheel.

1 a. Johnson Document Request No. 14; Water Wheel Document Request
2 No. 27.

3 53. Sanctions are imposed against Defendant Johnson in accordance with TRCP
4 Rule 37. The Court therefore finds that from 1999 to the present, Johnson has
5 borrowed and used Water Wheel funds for his personal use and for the use of third
6 persons.

7 a. Johnson Interrogatories Nos. 17, 18, 19, 20.

8 54. Sanctions are imposed against Defendant Johnson in accordance with TRCP
9 Rule 37. The Court therefore finds that Water Wheel and Johnson's financial records
10 are not separately maintained.

11 a. Document Request No. 12; Water Wheel Document Request No. 25; c.
12 Johnson Interrogatories Nos. 23, 24; Water Wheel Interrogatories Nos.
13 12, 13.

14 55. Sanctions are imposed against Defendant Johnson in accordance with TRCP
15 Rule 37. The Court therefore finds that since Johnson became president of Water
16 Wheel, Water Wheel has not kept corporate minutes or elected directors.

17 a. Water Wheel Document Request No. 19, 20.

18 56. Sanctions are imposed against Defendant Johnson in accordance with TRCP
19 Rule 37. The Court therefore finds that Johnson's compensation from Water Wheel
20 has increased from 1999 to the present.

21 a. Johnson Document Request No. 18; Water Wheel Document Request
22 No. 14; Water Wheel Interrogatories No. 9.

23 57. Sanctions are imposed against Defendant Johnson in accordance with TRCP
24 Rule 37. The Court therefore finds that Johnson has commingled rent monies Water
25 Wheel owes to the Tribes with his own personal assets.

26 a. Johnson Document Request No. 13; Water Wheel Document Request
27 Nos. 25, 26; Johnson Interrogatories No. 17, 18, 19, 20.
28

2402,594.00
50 FEE!

DAMAGES

58. CRIT is entitled to its lost profits of **\$33,549.58** per month, from July 7, 2007 until Defendants vacate the property. The damages (lost profits) and judgment shall bear interest at ten percent (10%) per annum.

a. Testimony of Walter Winius.

59. CRIT is entitled to **\$190,857.16** for unpaid percentages of gross receipts of business under the Lease. The damages (unpaid percentages of gross receipts of business) and judgment shall bear interest at ten percent (10%) per annum from the date each annual rental payment was due under the terms of the lease

a. Evidence in support of Paragraphs 10-18, *supra*.

b. Plaintiff's Exhibit 1, Lease, pg III, para. V.

c. Property Code, § 1-316(b).

60. CRIT is entitled to **\$1,295,289.26** in damages for unpaid minimum annual rent under the Lease from July 7, 2000 to July 7, 2007. The damages (unpaid minimum annual rent) and judgment shall bear interest at ten percent (10%) per annum from the date each annual rental payment was due under the terms of the lease

a. Evidence in support of Paragraphs 19-31, *supra*.

b. Plaintiff's Exhibit 1, Lease, pg III, para. V.

c. Property Code, § 1-316(b).

61. Per Property Code, § 1-316(i) and per the Lease, Plaintiff's Exhibit 1, Addendum, pg 19, para. 22, CRIT is entitled to **\$281,382.00** in attorneys' fees and **\$2,110.72** in costs.

a. Declaration of Winter King in Support of Plaintiff's Request for Attorney's Fees and Costs filed June 2, 2008.

b. Supplemental Declaration of Winter King in Support of Plaintiff's Request for Attorney's Fees and Costs filed June 11, 2008.

DEFENDANTS ARE NOT ENTITLED TO "OFFSETS" OR "DAMAGES"

62. Defendants waived any claim to "offsets" or "damages" by failing to plead them as affirmative defenses.

63. Sanctions are imposed against Defendants Water and Johnson in accordance with TRCP Rule 37. The evidence presented in support of Defendants' claim for damages must be excluded as a sanction for Defendants' refusal to produce documents requested by CRIT and ordered by this Court.

a. Plaintiff's Second Request for Production and Inspection of Documents to Defendants Water Wheel, served on March 3, 2008 ("Second Water Wheel Document Request"), Requests 12-14, 23-24.

64. Defendants failed to prove that they are entitled to "offsets" or "damages."

65. Defendants failed to prove that CRIT breached the terms of the Lease.

66. Defendants failed to present any credible evidence of the amount of damages supposedly incurred by Defendants.

WHEREFORE IT IS ORDERED THAT:

67. CRIT's Petition for Eviction is GRANTED.

68. The Court finds that Defendant Water Wheel has breached the lease with CRIT by failing to pay rent, and awards CRIT the following damages:

1. One Hundred Ninety Thousand, Eight Hundred Fifty-Seven dollars and Sixteen cents (\$190,857.16) for unpaid percentages of gross receipts of business, and

2. One Million, Two Hundred Ninety-Five Thousand, Two Hundred Eighty-Nine dollars and Twenty-Six cents (\$1,295,289.26) for unpaid minimum annual rent.

3. Total damages for unpaid rent is One Million, Four Hundred Eighty-Six Thousand, One Hundred Forty-Six dollars and Forty-Two cents (\$1,486,146.42).

4. The total damages shall bear interest at ten percent (10%) per annum from the date each rental payment was due to the Tribes under the terms of the lease.

69. The Court finds that Defendants have intentionally interfered with CRIT's prospective economic advantage. The Court finds that Defendants have occupied CRIT's property without CRIT's permission and awards CRIT Thirty-Three Thousand, Five Hundred Forty-Nine dollars and Fifty-Eight cents (\$33,549.58) per month as damages for its lost profits from July 7, 2007 until the date Defendants vacate the property. The damages shall bear interest at ten percent (10%) per annum.

70. The Court declares that the Lease has expired on or about July 7, 2007 and that Defendants have no right, title, and/or interest in the property.

71. The Court awards CRIT Two Hundred Eighty-One Thousand, Three Hundred Eighty-Two dollars (\$281,382.00) in attorneys' fees and Two Thousand, One Hundred Ten dollars and Seventy-Two cents (\$2,110.72) in costs.

72. CRIT's Motion in Limine to Exclude Evidence at Trial on the Merits filed June 2, 2008 is GRANTED.

73. Defendants Water Wheel and Robert Johnson are jointly and severally liable for all damages awarded pursuant to this Order.

74. Pursuant to the Order issued by United States District Judge David G. Campbell on March 14, 2007 in *Water Wheel Camp Recreational Area, Inc., et al. vs. Gary LaRance, et al.*, Case No. CV08-0474-PHX-DGC, Plaintiff Colorado River Indian Tribes shall afford Defendants Water Wheel and Johnson a period of 15 days, commencing the date the CRIT Court of Appeals enters a final appellate decision, to seek review of their *Montana* arguments in the U.S. District Court for the District of Arizona before taking any action to evict Defendants from the property or otherwise interfering with Defendants' occupancy of the property.

Date June 13, 2008

Gary LaRance, Chief Judge
Colorado River Indian Tribes Trial Court

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

Response Memorandum of April 24, 2009

Tribal Court Record-3

Colorado River Indian Tribes v. Water Wheel

Court of Appeal Decision of March 10, 2009

(not attached—This document is attached as Exh. 1 to the Joint Status Report filed in No. 2:08-CV-474 on March 17, 2009 (Dkt. # 46-1).

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

Response Memorandum of April 24, 2009

Tribal Court Record-4

Colorado River Indian Tribes v. Water Wheel

Order of January 15, 2008 Denying Motions to Dismiss

**(not attached—This document is attached as Exhibit B to Plaintiffs'
Complaint in No. 2:08-CV-474 (Dkt. #1-2)**

Defendants' Exhibit 1

Response Memorandum of April 24, 2009

Tribal Court Record-5

Colorado River Indian Tribes v. Water Wheel

1975 Lease between Water Wheel and CRIT

**(not attached—This document is attached as Exhibit A to Exhibit A of
Plaintiffs' Complaint in No. 2:08-CV-474 (Dkt. # 1-1, pp. 13-46)**

Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-6

Colorado River Indian Tribes v. Water Wheel

Judgment in *United States v. Denham*

(not attached—This document is attached as Exhibit 3 to Defendants' Opposition to Plaintiffs' Emergency Motion for TRO, filed March 13, 2008, in No. 2:08-CV-474 (Dkt. # 14-3))

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-7

Colorado River Indian Tribes v. Water Wheel

Letter from Jack D. Holt, dated May 30, 1973

Keller and Holt

EDGAR C. KELLER
JACK D. HOLT
STEVEN K. McGUIRE

JUN 1 1973

U. S. ATTORNEY
LOS ANGELES, CALIF

United States Attorney
U. S. Courthouse
312 North Spring Street
Los Angeles, California 90012

Attn: Bryan N. Freeman, Assistant U. S. Attorney

Re: U.S. vs. Denham
U.S. District Court Case No. 73-495-ALS

Gentlemen:

Following our conference a short time back, I caused my client to come to our area and I have now had an opportunity to consult with him concerning the matters that we discussed. First, I have caused a stipulation to be prepared along the lines that we discussed, and the same is enclosed herewith. I have executed the original and one copy. I request that upon your execution of it that it be filed with the court and that the copy be returned to this office.

Our discussion contemplated that we would explore the possibilities of some amicable resolution of the problem. Accordingly, I have been authorized by Mr. Denham to propose to you, by way of compromise only, that a resolution of this matter be had on the following general terms:

1. Mr. Denham would relinquish any defense that he claims to your action and would allow judgment to be taken wherein the government or its client agencies would have title free of his claim.
2. A lease would be entered into that, for the want of a better term, might be referred to as a development lease that would include, among others, the following general terms:
- a. The term of the lease would be approximately 50 years and would reflect the purpose of both parties that development efforts be taken on the property to make it suitable for recreational purposes.

Council to decide terms of lease - Rental - acreage,
and Pasture Damage in any settlement or
counter offer to be made to Denham
or other stipulations.

Try to get survey and appraisal before RDC
+ Council.

United States Attorney
May 30, 1973
Page Two

- b. The premises would include approximately 60 acres more or less and would generally consist of an area from a spot which is near ~~the~~ Hawker's Hoot and Holler located on Highway 95 and would extend northwesterly to a spot known as Point Consabe and which would include river frontage from Point Consabe approximately 900 feet downriver to what has been referred to as the property leased by the tribal council for housing purposes. I recognize that this is not particularly specific but, for the want of a better description at this point, I felt that the reference points herein would be helpful. If the general terms are acceptable, we could be more specific with reference to the premises involved.
- c. The rental would be at the rate of \$100.00 per acre per year, which I calculate to be approximately \$6,000 per year and it would be payable in September of each year.
- d. Denham would, for development purposes of the property, commit himself to do at least the following within the first five years:
 - (1) Remove the existing structure.
 - (2) Install spaces for a minimum of 100 trailers.
 - (3) Create and improve at least 100 camping spaces.
 - (4) Dig and install a well and modern water distribution system.
 - (5) Install modern sewer hookups and electrical distribution systems.
 - (6) Construct modern restroom-shower-laundry facility buildings and fully equip them.
 - (7) Construct modern recreational-snack bar-store structures.
 - (8) Construct a concrete boat launching facility suitable for moderate use.
 - (9) Landscape and provide improved roadways upon the premises.

United States Attorney
May 30, 1973
Page Three

- e. At the expiration or termination of the lease, all improvements to the realty would revert to the lessors.

I felt that the foregoing terms would be the principal ones for consideration, and I recognize that any completed lease arrangement would, as is customary, include a number of other so-called "housekeeping terms."

I would appreciate it if you could explore with your client the feasibility of entering into a lease to include the above terms and then let me know at the earliest opportunity. Both Mr. Denham and myself will be available at any mutually convenient time to meet with your clients as we discussed. I am hopeful that we can accomplish a resolution of our problem by such a compromise at a very early opportunity.

Very truly yours,

KELLER AND HOLT


Jack D. Holt

JDH/jcs

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-8

Colorado River Indian Tribes v. Water Wheel

**Letter from U.S. Attorney William D. Keller,
dated October 1, 1974**

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
PAYABLE NUMBER

BNF:rw

(213) 688-5709

United States Department of Justice

UNITED STATES ATTORNEY

CENTRAL DISTRICT OF CALIFORNIA
U. S. COURT HOUSE
312 NO. SPRING STREET
LOS ANGELES, CALIFORNIA 90012

Indelible

October 1, 1974

Airmail

Honorable Wallace H. Johnson
Assistant Attorney General
Land & Natural Resources Division
Department of Justice
Washington, D. C. 20530

OCT 4 12 42 PM '74
DEPT. OF JUSTICE
MAIL UNIT

Attention: Mr. Floyd L. France
Chief, General Litigation Section

Re: United States v. Bert Thomas Denham,
et al., Civil No. CV 73-495-ALS
Your Reference: 90-2-10-520

Dear Mr. Johnson:

OFFER IN SETTLEMENT

The above action is one of the Colorado River Trespass cases involving a trespass on the California side (Benson Line area) of the Colorado River Indian Reservation. The complaint was filed on March 7, 1973. Please see the litigation report originally sent to you by Interior for a summary of the facts surrounding the trespass.

The defendants have submitted an offer in settlement whereby the parties would stipulate to a judgment providing that the United States is the owner of the subject property, either in its sovereign capacity or as trustee for the Tribes. A copy of the proposed judgment and Stipulation (executed by the attorney for the defendants) is enclosed. In addition, the Tribes and United States would waive damages for the defendants' past, illegal use of the property. Finally, the

LANDS - GEN. LIT. SEC.
General Trial Unit

2.

Tribes would issue a lease to defendants covering a portion of the subject property. A copy of the proposed lease executed by defendants (incorporated as Water Wheel Camp, etc.) is also enclosed.

Recommendation

We recommend acceptance of the offer in settlement. The only concession made by the Tribes is the waiver of damages for the past unauthorized use of the property. The preliminary estimate of rental damages contained in the litigation report is \$7,400.00 for the trespass period of June, 1968, to September, 1972. As pointed out in the settlement memorandum in United States v. Lonesome Valley (Your No. 90-2-10-502), damages in these types of cases have been difficult to assess and prove, especially where, as in this case, there have been substantial improvements made by the defendants (e.g. United States v. Williams). While there is relatively minor risk of loss on the issue of title, the case may be delayed by similar defenses as are raised in the pending case of United States v. Rock (Your No. 90-1-10-922). Therefore, a prompt disposition of the action with an immediately effective lease providing income to the Tribes would appear preferable to litigating the case (which most likely would involve an appeal), and with speculative recovery of money damages. The proposed "semi-developmental" lease is based upon prevailing market factors, and is economically advantageous to the Tribes in our opinion.

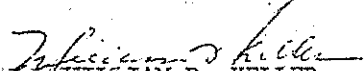
Special Assistant United States Attorney Bryan N. Freeman has conferred with the Tribal Council, Colorado River Indian Reservation, concerning the subject settlement. The Council approved the settlement in the form proposed herein, although a formal Resolution has not been received to that effect.

Also please find enclosed two letters addressed to the Colorado River Indian Tribes from Jack Holt, counsel for defendants. The letters are formal requests for waivers of the performance and rental bonds, pursuant to discussions with Mr. Holt. Please transmit the

3.

requests to the Tribes and other proper parties for their consideration along with the settlement proposal. However, the settlement proposal is not conditional upon the waiver of the performance and rental bonds.

Very truly yours,



WILLIAM D. KELLER

United States Attorney

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-9

Colorado River Indian Tribes v. Water Wheel

**Memo from Acting Riverside Field Solicitor, USDOJ,
dated April 2, 1975**



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

3610 CENTRAL AVENUE, SUITE 104
RIVERSIDE, CALIFORNIA 92506

April 2, 1975

Memorandum

To : Superintendent, Colorado River Agency, BIA, Parker
From : Acting Field Solicitor, Riverside
Subject: United States v. Bert Thomas Denham et al.,
Civil No. 73-495-ALS



Enclosed is a copy of a Judgment entered March 5, 1975, which, in effect, holds that the United States is the owner and entitled to possession of the lands involved in the subject action and dismisses the second cause of action for damages with prejudice. This Judgment was entered as part of the settlement which includes leasing the Indian lands upon which Water Wheel Camp is located to the defendants.

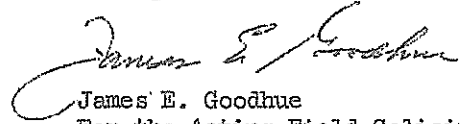
To complete this settlement, Counsel for the defendants has requested that he be provided with a fully executed duplicate original of the lease between the Colorado River Indian Tribes and the Denhams. In addition, by letters of September 10, 1974, to the Tribes through your office, the defendants through their attorney formally requested waivers of the provisions of the lease which require the deposit of a rental bond (Section 9) and a performance bond (Section 10). These letters also set forth the reasons justifying the requests. It would now be appropriate to take action on these requests since the Judgment has been entered. The defendants would also like to know the name and address of the individual to whom the Denhams should direct communications with reference to the lease, particularly to whom they may submit their plans for development and approval thereof required by the terms of the lease and the name and address of the payee to whom rental payments should be made.

Mr. Denham understands that the Bureau recently caused a survey to be made of the area occupied by Water Wheel Camp. If this is so, he would like to have a copy thereof and an accurate computation of the acreage upon which rental payments would be based.

ENTERED 5-7 1975

We have been requested to send the lease and the information called for above to defendants' Counsel. Accordingly, please send this to us as soon as possible.

Robert D. Conover
Acting Field Solicitor



James E. Goodhue
For the Acting Field Solicitor

Enclosure

cc: Area Director, BIA, Phoenix
Associate Solicitor, Indian Affairs
(w/cpy of encl.)
Bryan N. Freeman, Spec. Assistant to the U.S. Attorney, L.A.
(w/o cpy of encl.)

Water Wheel v. LaRance
No. 2:08-CV-474-PHX-DGC

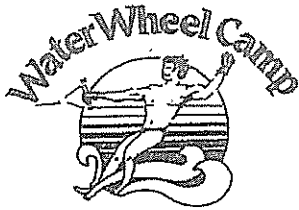
Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-10

Colorado River Indian Tribes v. Water Wheel

**Certain Exhibits attached to Deposition
of Robert Johnson, February 29, 2008**



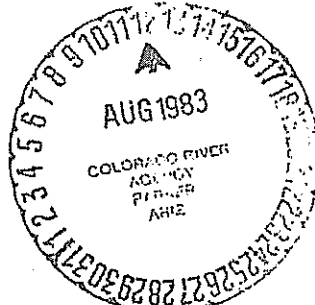
Water Wheel Recreational Area, Inc.

BOX 2900, PARKER STAR RT. — BLYTHE, CALIFORNIA 92225

(714) 922-3863

August 9, 1983

Colorado River Indian Tribes
Route 1, Box 23-B
Parker, Arizona 85344



AUG 12 1983

Dear Sirs:

In order to again attract business to this area and to limit erosion as much as possible we, as holders of lease no.B-468-CR (Water Wheel Camp), are submitting for your consideration the following proposal for recreational boating on the Colorado River between Water Wheel Camp on the south and the Tuttle property on the north, a distance of approximately 2 miles.

Along this section, there is one area of approximately 2000 feet just north of Water Wheel on the Arizona bank with some erosion. The rest of this stretch of river has little or no erosion. At each end of the eroded section we will anchor a boat with a sign stating that no one should boat within 400 feet of shore. It is our experience that the wake created by the typical jet boat that is used in this area will pretty much disapeate before reaching shore from 400 feet. This is primarily due to the swift current.

At the northern end of this section near the Tuttle property, we will anchor 2 boats, each with signs attached, stating that no boat may go beyond this point. On the Water Wheel boat ramp we will place a sign stating that no boat may go south. (Attached to this proposal is a drawing of the sign placement.) If there is some problem with placing boats with signs in the river, we could accomplish the same objective by placing the signs on shore.

In addition to the signs on the river, we will hand out a sheet explaing the restrictons to everyone using our ramp. Since we have the only boat ramp in this area, everyone on the river will know of these restrictions. We feel that most of the people that come to our campground will abide by these rules. The ones that do not will be asked to leave.

We would like to note that 95% of all boating occurs on Saturday and Sunday. The other five days of the week there would be almost no boating in this area.

In order to get back into business and to protect the banks from erosion, we ask that you accept this proposal by revising Ordinance No. 83-5 to open the boat ramp at Water Wheel Camp.

Respectfully,

Robert R. Johns
Fredrick E. Rose

DEPOSITION
EXHIBIT

25

Johnson 2/24/08

Exh. 25



Water Wheel Resort & Recreational Area, Inc.

HCR 20 - 2900 - BLYTHE, CALIFORNIA 92225
(619) 922-3863

February 12, 1986

Colorado River Indian Tribe
Route One
Box 2313
Parker, Arizona 85434

RE: Lease Modification
Water Wheel

Gentlemen:

I am seeking a modification of the existing lease with the tribe to increase the number of trailer sites available within the park. As it presently stands, the corporation must maintain at least 100 campsites for tents, day campers, etc. We have done this. These campsites pay the tribe a 4% commission as they are used, the same as trailer sites, but unlike the trailer sites are not in full time use. Further the campsites generate a lower per diem charge than do the trailer sites.

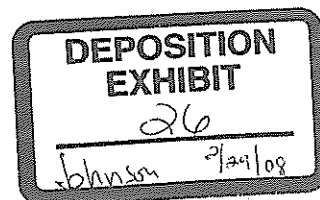
We therefore propose to reduce the number of campsites by building new trailer sites, on a one for one reduction basis, subject to your approval. We would not eliminate a camp site until existing trailer sites were filled and then only by the number we felt could be filled. Thus at all times we would have at least 200 trailer and/or camp sites as was contemplated in the original lease agreement, in combination rather than by separate count.

Our projections indicate that by replacing camp sites with trailer sites as set forth above will greatly increase the annual revenue from the park both to us and to the tribe.

If you have any questions, please contact us or our attorney, Carlton L. Harpst at (714) 835-2911. Please review this letter and give us your thoughts as soon as possible.

Sincerely

Water Wheel Resort and Recreation Area
by: Robert Johnson





Colorado River Indian Tribes
Resource and Development
Lease Agreement No. B-468-CR

April 6, 1989

Water Wheel Resort at the present has 139 permanent trailer sites, 34 over night sites, and 100 camping sites.

We are proposing to change our 34 over night trailer sites to permanent trailer sites plus adding 13 more sites.

To do this we will need to reduce the water, electric, and sewer of our 34 over night trailer sites. Develop remaining leased land approximate 8 acres. And eliminate camping sites.

Accompanying this proposal are three plans:

1. Existing plan as the park is today.
2. Proposal of improvements.
3. Master site plan.

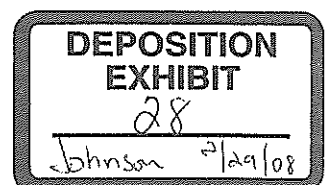
ELECTRIC: Electricity for the park is provided by Southern California Edison.

WATER: The park has two wells; one pumps 150 gallons per minute; the other, 300 gallons per minute. With additional trailers we will install another 300 gallon per minute well.

SEWAGE: The park has four evaporation ponds. For the past ten years we have pumped into one pond for six months and have maintained three dry ponds. The addition of 47 more trailers should not have any affect on our ponds. During the summer month we have had to add fresh water to our ponds to maintain a constant water level.

No anticipated density changes will occur the end result will be an addition of 47 permanent trailer sites. We are eliminating 34 over night sites, and 100 camping sites.

Water Wheel Resort and Recreational Area, Inc.
HCR 20-2900 • Blythe, California 92225 • (619) 922-3863



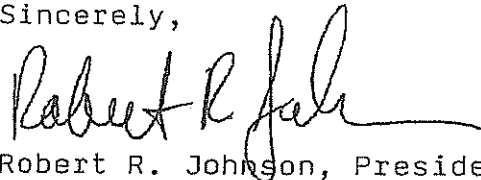
Water Wheel Resort is operated as a weekend, vacation resort. During our busy season April thru October our permanent trailer park has a 25% occupancy and our over night trailer sites and camping has a 50% occupancy. By changing to a permanent trailer park we will decrease the amount of people that are in the park at peak times. But, increase the gross receipts because permanent trailers spaces pay all year.

Our existing lease requires us to maximize the leased property to its full potential. And also states that the lessee agrees that, at all times during the term of this lease, it will diligently attempt to keep the leased premises and all part thereof actively used.

With the completion of our master plan we will have maximized the leased property to its fullest potential to insure the Tribe's maximum income.

Anxiously awaiting your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Johnson", with a long horizontal flourish extending to the right.

Robert R. Johnson, President
Water Wheel Resort, INC.
(619) 922-3863

Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-11

Colorado River Indian Tribes v. Water Wheel

Order of February 21, 2008

(not attached—This document is attached as Exhibit 1 to Defendants' Opposition to Plaintiffs' Emergency Motion for TRO, filed March 13, 2008 in No. 2:08-CV-474 (Dkt. # 14-1)

Defendants' Exhibit 1

To Response Memorandum of April 24, 2009

Tribal Court Record-12

Colorado River Indian Tribes v. Water Wheel

Order of March 18, 2008

(not attached—This document is attached as Exhibit B to Plaintiffs' Second Motion for Temporary Restraining Order, dated May 10, 2008, in No. 2:08-CV-474 (Dkt. # 26-2))